

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

---

No. 08-11415  
Non-Argument Calendar

---

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPT 12, 2008 THOMAS K. KAHN CLERK
--

D. C. Docket No. 92-06122-CR-WJZ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SEAN JOHNSON,

Defendant-Appellant.

---

Appeal from the United States District Court  
for the Southern District of Florida

---

**(September 12, 2008)**

Before BLACK, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

Sean Johnson, a federal prisoner convicted of a crack cocaine offense, appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence based on an amendment to the Sentencing Guidelines that lowered the base offense levels applicable to crack cocaine. The Government did not file a response to Johnson's motion in the district court, and the district court's order denying Johnson's motion stated that it had "carefully reviewed said Motion and the entire court file" and was "otherwise fully advised in the premises." The district court did not otherwise explain its ruling. Johnson asserts the district court abused its discretion because the basis for the denial cannot be clearly discerned, thus, effective appellate review is not possible.

We review a district court's decision whether to reduce a defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2) for abuse of discretion. *United States v. Brown*, 332 F.3d 1341, 1343 (11th Cir. 2003). Generally, "the court may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c). However, where a defendant has been sentenced pursuant to a sentencing range "that has subsequently been lowered by the Sentencing Commission . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing

Commission.” 18 U.S.C. § 3582(c)(2). Section 1B1.10(b)(1) of the Sentencing Guidelines provides:

In determining whether, and to what extent, a reduction in the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.

U.S.S.G. § 1B1.10(b)(1). The application notes for U.S.S.G. § 1B1.10 instruct that the court: (1) shall consider the § 3553(a) factors; (2) shall consider the nature and seriousness of the danger to any person or the community posed by the reduction; and (3) may consider the post-sentencing conduct of the defendant. U.S.S.G. § 1B1.10, comment. (n.1(B)).

We have instructed that in considering a defendant’s motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2), a district court must engage in a two-part analysis: first, the court must recalculate the sentence under the amended guidelines; second, the court must decide whether, in its discretion, it will choose to impose a new sentence or retain the original sentence. *United States v. Bravo*, 203 F.3d 778, 780-81 (11th Cir. 2000). The second part of the analysis “should be made in light of the factors listed in 18 U.S.C. § 3553(a).” *Id.* at 781.

The district court's order denying Johnson's motion stated that it had "carefully reviewed said Motion and the entire court file" and was "otherwise fully advised in the premises." The district court did not otherwise explain its ruling. Accordingly, the record does not demonstrate the district court took the pertinent factors into account in denying Johnson's motion. Accordingly, we vacate the district court's order denying Johnson's motion for reduction of sentence and remand for further consideration and explanation.

**VACATED AND REMANDED.**